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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/395,106	09/14/1999	JAMES A. WESTHOFF	POL3.036	5428

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EXAMINER

TRAN A, PHI DIEU N

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/395,106

Applicant(s)

WESTHOFF ET AL.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 1-20, 28, 29 and 37-40 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-36 is/are allowed.
- 6) ☒ Claim(s) 21-27 and 41-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-26, 41-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Brooks.

Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having a having a cylindrical outer surface and having an open end and a close end (4), one of said ends having an exterior surface having a flange (10) lying in a plane inclined to longitudinal axis of said housing, an interior surface of said housing having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward, the outer surface being provided with a plurality of annular flanges (8) integral with and extending radially outward from said housing and spaced along the housing.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 21-26, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks in view of Summerlin et al (AU2606498).

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Brooks (figure 1) shows an insert having a hollow substantially cylindrical shaped elongated housing having an open end and a close end (4), one of said ends having a flange (10) lying in a plane diagonally aligned with a longitudinal axis of said housing, another one of said ends having a flange (8) lying in a plane perpendicular to said longitudinal axis, an interior surface of said housing having a portion thereof being provided with a plurality of annular projections (the threads) arranged at spaced intervals and extending radially inward, each projection having a tapering cross-section defined by a first surface diagonally aligned with the longitudinal axis and facing the open end (the tapering surface of the thread when looked upon from the open end), a plurality of ears (6) integrally joined at the open end of said housing and projecting away from the housing, each having a hooked-shaped configuration and cooperating with a flange adjacent said open end to embrace a marginal portion surrounding an opening, said end at said open end adapted to cover an opening to prevent seepage therethrough (inherently can be adapted to do so), a second plurality of flanges (8) extending radially outwardly from the housing and spaced along the housing, said closed end having a flange (8) integral with said housing and extending radially outward therefrom, a portion of said housing adjacent to said closed ends and a said closed end having a thickness which is chosen to provide additional structural strength (inherently so from the structure), at least an exterior portion(10) of the surface of the closed end being inclined relative to said longitudinal axis, the diagonally aligned flange lies in a plane (inherently so as the flange lies in at least one plane, the claim does not require that the flange has to be in one plane only).

Brooks does not show the second surface of the projections being perpendicular to said longitudinal axis and facing the closed end.

Summerlin (figure 2) shows an insert having internal projections (14) having tapering cross section defined by a first surface diagonally aligned with the longitudinal axis and facing an open end, a second surface perpendicular (from the look of the mating parts) to said longitudinal axis and facing another end.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brooks' projections to show the second surface being perpendicular to said longitudinal axis and facing the closed end because the examiner takes Official Notice of the equivalence of the projections with a surface perpendicular to a longitudinal axis and the projections with a second surface diagonally aligned with the longitudinal axis for their use in the insert and anchor art and the selection of any of these known equivalents to anchor a pin would be within the level ordinary skill in the art.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ditcher (4771861) in view of Peacock and Sawdon et al(6200059).

Ditcher (figure 2) shows in combination an insert and a reciprocable pin assembly having a hollow substantially rectangular insert, the insert having a housing with an open end and a closed end, one of said ends having a flange lying in a plane perpendicularly aligned with a longitudinal axis of said housing, said pin being rectangular, the pin having a first portion of a different cross-section than a second portion of the pin, one edge of the pin detachably engaged the open end of the insert to form an annular shoulder at the juncture thereof (the mating juncture between the pin and insert forming shoulder), said shoulder being perpendicular to the longitudinal axis of the pin assembly.

Ditcher does not show the insert and the pin being substantially cylindrical in shape, the insert having at least one slot for insertion of a projection from one end of the second portion, the shoulder being formed by a first and second diameter of the pin at the juncture thereof.

Peacock discloses a pin having different cross sections forming annular shoulders for insertion into openings for forming step and to fasten the pin in the opening.

Sawdon et al (figure 11) discloses a pin(203) having a projection on one end for inserting into a slot (225) of an insert (221) to enable alignment of parts to easy manipulation.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ditcher to show the insert and the pin being substantially cylindrical in shape, the insert having slots for insertion of a projection of the pin, the shoulder being formed by a first and second diameter of the pin at the juncture thereof, a projection being arranged on said shoulder and extending into said slot on the insert because it is a matter of design choice to make the insert and the pin of a substantially cylindrical shape as the assembly functions the same to provide steps for manhole, and it would have been obvious to show the inserts having slots for insertion of a projection from the pin because it would allow for the proper alignment, and fastening of a pin in the cylindrical insert.

Allowable Subject Matter

5. Claims 30-36 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter:
prior art does not show the diagonal flange intermediate the first and second ends, and the slots in combination with other claimed structures. Prior art also does not provide sufficient

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motivations to modify the references Bowen, Zenhausern et al, or Takahashi to show the claimed limitations.

Response to Arguments

2. Applicant's arguments with respect to claims 21-27, 41-44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different manhole step designs.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A *PA*
May 5, 2002

LANNA MAI
SUPERVISORY PATENT EXAM.
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